

J3RVKETS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 243 (SHS)

5 ARASH KETABCHI,

6 Defendant.

SENTENCE

7 -----x

8 New York, N.Y.

9 March 27, 2019

4:33 p.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
Southern District of New York

17 KIERSTEN A. FLETCHER

Assistant United States Attorney

18 GARY G. BECKER

19 Attorney for Defendant

20 ALSO PRESENT: CHRISTOPHER BASTOS, NYPD

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1 (Case called)

2 MS. FLETCHER: Good afternoon, your Honor.

3 Kiersten Fletcher, for the government.

4 I'm joined at counsel's table by Detective Christopher
5 Bastos of the New York City Police Department and Homeland
6 Security Investigations.

7 THE COURT: Good afternoon.

8 MR. BECKER: And good afternoon, your Honor.

9 I'm Gary Becker, on behalf of Mr. Ketabchi, who is
10 standing here in court next to me.

11 THE COURT: Good afternoon to both of you.

12 Now, Mr. Becker, we just had a conversation where some
13 of the defense counsel assembled here said they had not seen
14 the victim impact statements.

15 Have you had an opportunity to look at those? Because
16 I'll give you whatever time you need.

17 MR. BECKER: I have, your Honor. I don't need any
18 additional time with respect to that.

19 THE COURT: Where is the set that I handed down now?
20 Do you have it or is it another attorney?

21 MS. FLETCHER: I believe Sam Schmidt, counsel for
22 Andrew Owimrin, has it in the courtroom.

23 THE COURT: All right.

24 I have the following information that I reviewed, in
25 addition to obviously presiding over the trial of Mr. Owimrin

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1 and Mr. Shahram Ketabchi:

2 I have the presentence report, revised on March 5th of
3 this year, along with the addendum and the sentencing
4 recommendation of 70 months on a guideline range of 70 to 87
5 months. I have the psychiatric report of Eric Goldsmith, M.D.,
6 PLLC. I have the sentencing memorandum of Arash Ketabchi
7 received by my chambers on March 12.

8 And in terms of the information that's relevant to all
9 the defendants, I have the government's, as I referred to it
10 before, relative culpability letter dated March 13; and I have
11 the government's sentencing letter for all the defendants dated
12 March 12 -- for the relevant defendants, I should say, dated
13 March 20.

14 Mr. Becker, is there any additional information I
15 should have? Written information.

16 MR. BECKER: No, your Honor.

17 And forgive me if I missed it, along with my -- you
18 may have said this. Along with my sentencing submission and
19 Dr. Goldsmith's report, I also submitted a number of letters on
20 behalf of Mr. Ketabchi from numerous persons, many of whom --

21 THE COURT: Many, many letters. They are attached --
22 in the form I have them, they are attached to your sentencing
23 memorandum, and they are under document 387-12.

24 MR. BECKER: Yes, your Honor. Thank you.

25 THE COURT: One two 15.

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1 So is that what you're referring to? I've read all of
2 that information.

3 MR. BECKER: Yes, your Honor.

4 THE COURT: All right.

5 Government, any additional written information I
6 should have?

7 MS. FLETCHER: Nothing written, your Honor.

8 THE COURT: Mr. Becker, have you and Mr. Arash
9 Ketabchi had a full opportunity to read and discuss this
10 information, and have you, in fact, already discussed it?

11 MR. BECKER: Yes, your Honor.

12 THE COURT: I'll refer to this defendant as
13 "Mr. Ketabchi." Obviously there's a brother who is going to be
14 sentenced as well.

15 Do you have any objections to the findings of fact in
16 the presentence report, Mr. Becker?

17 MR. BECKER: Yes, your Honor.

18 Two of them are in my letter to the Court. But
19 there's one that I picked up after my submission. That is
20 paragraph 61, which discusses Mr. Ketabchi's mental and
21 emotional health and lists the psychotropic medications that
22 he's taking.

23 THE COURT: All right. Just a moment.

24 Let me go to my notes.

25 Yes, sir.

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1 MR. BECKER: On the second line of paragraph 61, it
2 says that he -- "he" meaning Mr. Ketabchi -- has been
3 prescribed and is taking five milligrams of Topomaz. In fact,
4 that's Topamax; it's an "X," not a "Z."

5 THE COURT: All right. I'm going to change the X --
6 the "Z" to an "X." The second line of paragraph 61.

7 MR. BECKER: Thank you, your Honor.

8 And the dosage, I understand, is now 100 milligrams.
9 It had been 25, not five; it's been raised over time.

10 THE COURT: I'm going to change five milligrams of
11 Topamax to 100 milligrams of Topamax.

12 MR. BECKER: Thank you, your Honor.

13 The next objection is paragraph 15 --

14 THE COURT: Now, on 61, am I correct that Ketabchi --
15 look at the third line. Ketabchi has been under the care of
16 Dr. Joseph M. Verret, psychologist, since his arrest; is that
17 correct?

18 MR. BECKER: Dr. Verret is a psychiatrist, not a
19 psychologist.

20 THE COURT: Psychiatrist, I'm sorry.

21 MR. BECKER: And since shortly after his arrest, at
22 the direction of pretrial services, Mr. Ketabchi was referred
23 to Dr. Verret, who sees Mr. Ketabchi periodically and also
24 monitors his medications.

25 THE COURT: All right.

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1 Well, we'll leave it as it is; there's nothing there
2 that's inconsistent with what you've just said.

3 What else?

4 MR. BECKER: Your Honor, paragraph 15 -- this is in my
5 sentencing submission at page 12 -- says that the telemarketing
6 companies were separate, but interrelated entities, several of
7 which were owned and operated by Arash Ketabchi.

8 THE COURT: Just a moment. I want to turn my notes to
9 indicate that what you just said is on page 12.

10 Let me just take a look at it, sir.

11 (Pause)

12 THE COURT: All right. I see what's there.

13 Essentially, what you're saying -- and I think it's
14 true -- is that the stipulation in the plea is that he was
15 manager or supervisor, not an organizer or a leader. And the
16 guideline calculations account for that.

17 So what are you asking?

18 MR. BECKER: Well, my concern, your Honor -- that's
19 correct. But my concern about paragraph 15 and also paragraph
20 20 is actually a concern that is prompted by much of what the
21 government has said in its submission, is that by saying in
22 paragraph 15 and then in 20 that Arash Ketabchi and William
23 Sinclair together owned and operated --

24 THE COURT: I understand. You think Sinclair is more
25 culpable than Arash because Sinclair was the owner and Ketabchi

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1 was the supervisor of the floor and the manager. That's your
2 point.

3 MR. BECKER: Well, there are many reasons why I think
4 he's more culpable, that's certainly one.

5 My point is is that it's not accurate to say that
6 Ketabchi and Sinclair owned businesses together. They did not.
7 Ketabchi worked for Sinclair.

8 THE COURT: Okay. All right. Just a moment.

9 (Pause)

10 THE COURT: All right. How about on page 15 then --
11 paragraph 15, to say: The telemarketing companies were
12 separate, but interrelated, entities, several of which were
13 owned by William Sinclair and operated by Arash Ketabchi and
14 William Sinclair.

15 MR. BECKER: My understanding is that Mr. Ketabchi was
16 a manager or supervisor at Olive Branch marketing company owned
17 by Bill Sinclair. I don't believe he managed any other
18 companies owned by Bill Sinclair.

19 THE COURT: All right.

20 Government?

21 MS. FLETCHER: Your Honor, I think the paragraph is
22 fine as is. It does not indicate that the two of them managed
23 the companies together, only that --

24 THE COURT: No, but it says he was an owner -- oh, I
25 see, because you're thinking about A-1.

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1 MS. FLETCHER: Correct.

2 They are both owners and operators of telemarketing
3 floors during overlapping points of time. The point is that
4 both of them are former Manhattan Professional Group a/k/a Tax
5 Club employees, who then branched out to open up their own
6 sales floors. The paragraph is accurate as is.

7 THE COURT: All right.

8 But I understand the inference that Mr. Becker is
9 trying to avoid.

10 Let me just think for a moment.

11 (Pause)

12 MS. FLETCHER: May I make a proposal, your Honor?

13 THE COURT: Yes.

14 MS. FLETCHER: It's not clear to the government why
15 William Sinclair needs to be in that paragraph at all. The
16 government would be fine extracting him and just saying: Owned
17 and operated by Arash Ketabchi, who was a former employee of
18 Manhattan Professional Group.

19 MR. BECKER: I don't think that's accurate, your
20 Honor. That's suggesting that Arash Ketabchi owned and
21 operated several companies.

22 What Arash Ketabchi did was he worked initially as a
23 salesman and sales manager for Bill Sinclair at Olive Branch.
24 Bill Sinclair asked him -- and he testified to this -- to open
25 up a merchant account called A-1, because Bill Sinclair's

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1 merchant accounts had been shut down.

2 Ketabchi opened up an account at Bill Sinclair's firm
3 called A-1. When Ketabchi left Olive Branch, he operated A-1
4 and had two or three employees. Bill Sinclair had 15.

5 Mr. Ketabchi also opened up other merchant accounts
6 that he used when he sold under A-1 for the same reason that
7 Olive Branch had several merchant accounts. Firms need
8 merchant accounts.

9 He operated this business out of his home. He had two
10 or three employees.

11 The government has linked him with Bill Sinclair
12 throughout the PSR, throughout the sentencing memorandum. And
13 I dare say, your Honor, if you look at the presentence
14 memorandum of the other -- excuse me, the presentence reports
15 of the other defendants in this case, I predict it will say,
16 wrongly, that Mr. Ketabchi and Bill Sinclair were organizers
17 and leaders of the scheme, because that's what my first PSR
18 said. And that's what the government has been peddling
19 improperly. He was a manager or supervisor.

20 THE COURT: Well, he was a star of the trial that
21 didn't involve him. He is mentioned throughout that trial,
22 throughout that trial.

23 MR. BECKER: I'm aware of that, your Honor, very well
24 aware of that. And I ask the Court today, when your Honor
25 considers Mr. Ketabchi's fate, to take into account that I was

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1 not at that trial; that I could not confront any of the
2 witnesses who testified about him; that he did not have an
3 opportunity to be heard.

4 And I ask the Court -- while I'm not suggesting the
5 Court should block out of its mind what your Honor may have
6 heard, the fact of the matter is -- and I've read much of the
7 transcript and I was here for portions of Bill Sinclair's
8 testimony.

9 THE COURT: Your client, Mr. Ketabchi, was here
10 through most of it as well.

11 MR. BECKER: Well, I was only here for two days, but I
12 understand he may have been here more.

13 And there's no question, and I have -- I don't think
14 the government will dispute that Sinclair and Mike Finocchiaro
15 owned Olive Branch; and that Mr. Ketabchi worked for them, for
16 those two. And that he --

17 THE COURT: Well, wait. Because I think we may have
18 common ground here, but I'm not really sure what you're
19 arguing.

20 If you're arguing that Sinclair owned Olive Branch and
21 Ketabchi did not, the government is not going to disagree with
22 you on that, are you, government?

23 MS. FLETCHER: No, we're not, your Honor.

24 I think the argument is likely to relate to the other
25 entities that Arash Ketabchi operated after he left Olive

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1 Branch.

2 MR. BECKER: Your Honor, when I get to my general
3 sentencing remarks, I will have more to say on the subject of
4 what Mr. Ketabchi did and didn't do and his relative
5 culpability. And I appreciate the Court's concern about my
6 objection to paragraph 15 in the PSR. But trying to keep it
7 cabined for now, paragraph 15, I think any objective reader
8 would read that and say, Oh, Arash Ketabchi and Bill Sinclair,
9 they owned and operated the companies.

10 THE COURT: The government has agreed to take out
11 "Sinclair" from that paragraph, so don't fight that.

12 MR. BECKER: That makes it worse. Then it looks like
13 only Ketabchi owned and operated these companies. He didn't.

14 MS. FLETCHER: Ketabchi --

15 THE COURT: Just a moment.

16 We're not going to relitigate it in the context of
17 paragraph 15.

18 (Pause)

19 MR. BECKER: I think the fairest thing to say is that
20 there were several telemarketing companies. Mr. Ketabchi
21 overall was deemed the manager, was supervisor in the criminal
22 activity. The government stipulated he's not an organizer or
23 leader. In light of that, to then say, Oh, he owned and
24 operated these companies, no lawyer, no layperson would read
25 those two sentences together.

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1 THE COURT: All right. I got it. I got it.

2 (Pause)

3 THE COURT: Didn't your client own A-1, and it went
4 under a variety of names?

5 MR. BECKER: He opened up the merchant account at A-1
6 at the direction of Bill Sinclair while he was still at Olive
7 Branch so that Olive Branch could use that account and get the
8 monies from the sales. When he left Olive Branch, he began
9 working on his own and he ran his business under the name A-1,
10 yes.

11 THE COURT: Fine. Okay.

12 (Pause)

13 THE COURT: Arash was also a former employee of The
14 Tax Club, right?

15 MR. BECKER: Yes, your Honor.

16 THE COURT: This is how I'm changing paragraph 15:

17 "The telemarketing companies were interrelated
18 entities." I'm going to change it to: "Several of the
19 telemarketing companies were interrelated entities which were
20 either managed or owned and operated by, among others, Arash
21 Ketabchi, who was a former employee of Manhattan Professional
22 Group, d/b/a The Tax Club, a Manhattan-based telemarketing
23 entity that offered tax preparation services to customers until
24 it was disbanded following a Federal Trade Commission
25 enforcement action in 2012." That's paragraph 15.

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1 Do you also have an objection to 20; is that correct?

2 MR. BECKER: Yes, your Honor.

3 That's addressed at page 12 of my sentencing
4 memorandum.

5 THE COURT: Yes, I see it.

6 MR. BECKER: And it goes -- yes, page 12.

7 THE COURT: Government, in the plea agreements for
8 McGowan, Sinclair, and Finocchiaro, do they stipulate to being
9 leaders and organizers?

10 MS. FLETCHER: The plea agreements for Mr. Sinclair
11 and Mr. Finocchiaro don't include a guidelines calculation,
12 your Honor.

13 THE COURT: All right. Yes. Right.

14 MS. FLETCHER: The plea agreement for Joseph McGowan
15 indicates that he is a leader or organizer.

16 MR. BECKER: Your Honor, on that point, I should tell
17 the Court that when the PSR first came in, this paragraph said
18 that Arash Ketabchi, Joseph McGowan, William Sinclair, Michael
19 Finocchiaro, and Joseph McGowan were leaders and organizers of
20 the scam. And I objected because clearly the government had
21 stipulated that Mr. Ketabchi is not a leader/organizer, but
22 rather manager/supervisor.

23 THE COURT: That we've dispensed with that.

24 I agree with your point.

25 MR. BECKER: Yes.

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1 And so what they've done here is they've grouped him
2 in.

3 With respect to the question your Honor just asked,
4 McGowan's plea agreement says he's an organizer or leader. If
5 William Sinclair wasn't an organizer or leader in this case,
6 then I'll eat my hat.

7 THE COURT: This is how I'm changing --

8 MR. BECKER: He started the company --

9 THE COURT: I understand. I understand.

10 This is how I'm changing it: I'm changing paragraph
11 20 to read: "Arash Ketabchi was a manager and supervisor. And
12 Joseph McGowan, among others, was a leader or organizer of this
13 criminal activity." And then it continues on.

14 MR. BECKER: Very well.

15 THE COURT: Fair enough? Is that what you said?

16 MR. BECKER: I said very well, thank you.

17 THE COURT: Okay.

18 Have I handled your objections, sir, to the
19 presentence report?

20 MR. BECKER: One final one, it's on the top of page 13
21 of my sentencing memorandum concerning the penultimate sentence
22 on page 22.

23 THE COURT: Let me turn to it.

24 All right. This is how I propose -- that's not really
25 a finding of fact, in any event; it's their recommendation.

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1 But I can see --

2 MR. BECKER: Your Honor, I'm not referring to the
3 recommendation, I'm referring to --

4 THE COURT: You said justifications section, page 22;
5 that's a sentencing recommendation.

6 MR. BECKER: No, your Honor, if I said that, I
7 misspoke or perhaps your Honor misheard me. I'm referring
8 specifically to the penultimate sentence on the page that says:
9 "Erroneously, during the defendant's -- "

10 THE COURT: That's what I'm talking about also, sir.

11 MR. BECKER: Forgive me, your Honor. That's not the
12 actual recommendation; that's just a comment about whether --

13 THE COURT: You see the title at the top of the page?

14 MR. BECKER: Yes, your Honor.

15 THE COURT: What does it say?

16 MR. BECKER: Yes, your Honor.

17 THE COURT: What does it say?

18 MR. BECKER: "Sentencing Recommendation."

19 THE COURT: Okay.

20 This is how I propose we change the penultimate
21 sentence: On the page that says "Sentencing Recommendation,"
22 under the subhead "Justifications": "During the defendant's
23 presentence interview, defense counsel requested that we rely
24 on the inculpatory statement made by defendant during the plea
25 allocution."

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Any objection?

MR. BECKER: Yes, your Honor.

What I'm asking is that the sentence that says:

"During the defendant's presentence interview, he was advised by defense counsel not to discuss his involvement in the instance offense or to provide a statement for acceptance of responsibility." I'm asking that that sentence be stricken because, as is correctly noted in paragraph 29 of the PSR, it says, and I quote: "During the interview, the defendant provided a statement to the probation officer wherein he admitted involvement in the offense."

THE COURT: Okay. Sir, did you request of the probation officer that instead of your client providing a statement for acceptance of responsibility, the probation department rely on the statements your client made during his plea allocution?

MR. BECKER: No. He made a statement and also provided a written statement, just as it says in paragraph 29.

THE COURT: All right. Just a moment.

(Pause)

THE COURT: So you did not request that the probation department rely on your client's statement?

MR. BECKER: Certainly not exclusively. He made a --

THE COURT: All right. This is --

MR. BECKER: Paragraph 29 --

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1 THE COURT: This is a great deal about nothing.

2 Let me change the proposal. And again, it's not in
3 the findings of fact in the presentence report, but I'm trying
4 to accommodate you.

5 And I think this is what you want: Instead of the
6 penultimate sentence and the ultimate sentence on page 22, that
7 I substitute "The defendant provided a statement to the
8 probation officer wherein he admitted involvement in the
9 offense." All right?

10 MR. BECKER: Yes, your Honor. Thank you.

11 THE COURT: Government?

12 MS. FLETCHER: Fine, your Honor.

13 THE COURT: All right.

14 MR. BECKER: And your Honor --

15 THE COURT: That was 15 minutes about nothing. Done.

16 MR. BECKER: The reason I pressed this is because he's
17 accepted responsibility from earlier on; I wanted the Court to
18 be clear that he did so during the interview.

19 THE COURT: I'm changing the last two sentences of the
20 justification paragraph as I've set forth.

21 Government, do you have any objections to the findings
22 of fact in the presentence report?

23 MS. FLETCHER: No, your Honor.

24 THE COURT: Mr. Becker, tell me what you want me to
25 know. I've read all of this information, I assure you, and I

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1 also presided over the trial. What do you want me to know?

2 MR. BECKER: Thank you, your Honor.

3 Let me begin by saying I mentioned that the last
4 couple of rows in the courtroom have people here on behalf of
5 Mr. Ketabchi, and that includes his father, Mohammed Ketabchi.

6 THE COURT: You have to talk to me; I couldn't hear
7 you.

8 MR. BECKER: Forgive me, your Honor.

9 It includes his father, Mohammed Ketabchi, who I think
10 might be raising his hand.

11 THE COURT: Sir, Mr. Ketabchi, welcome, sir.

12 And he's been here before, as a matter of fact, when
13 Shahram Ketabchi was here last week or the week before. And
14 I've read your letter, sir, I understand very heartfelt letters
15 from everybody.

16 MR. BECKER: It includes a Dr. Ali Maz, whose last
17 name I have difficulty pronouncing. He's a chiropractic
18 physician --

19 THE COURT: Welcome, sir.

20 MR. BECKER: -- who wrote to your Honor.

21 Including -- and this is not so much in the letters,
22 an individual named Mark Quinn, who I hope is raising his hand.

23 THE COURT: Yes, he's doing better than that, he's
24 standing up.

25 MR. BECKER: Mr. Quinn is Mr. Ketabchi's sponsor at

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1 Alcoholics Anonymous.

2 THE COURT: And I've read all of the letters about
3 what an excellent sponsor he is from a variety of people.
4 There's no doubt about that.

5 MR. BECKER: And then there are a number of other
6 family members and supporters who are here in court.

7 THE COURT: And everyone is welcome.

8 MR. BECKER: Your Honor, I've had the great privilege
9 and responsibility of representing lots of people over the
10 years accused by the government of committing crimes. I feel a
11 particular sense of responsibility and importance here today,
12 given what's at stake for Mr. Ketabchi and his family, given
13 the torturous long path that got us here today and, quite
14 frankly, given --

15 THE COURT: I'm not sure what that means. The man was
16 indicted, a defense lawyer was appointed, an excellent defense
17 lawyer, he negotiated a plea, and here he is today. So what's
18 torturous?

19 MR. BECKER: Well, your Honor, because for two years
20 the case has been over his head, and this day of judgment is
21 now upon us. And I can only imagine what it must be like being
22 in a circumstance where you know that you're coming into a
23 courtroom where you know you're going to get sentenced to jail;
24 where you know you're going to have to say good-bye to the
25 people who love you. And, quite frankly, what's also been

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1 torturous is the interactions that I've had having learned
2 about Mr. Ketabchi's bipolar disorders, about his addiction
3 disorders, about the havoc that it wreaked in his life, and
4 about the efforts that he's made to overcome it.

5 Your Honor, I assure the Court that when you're living
6 with someone in the sense that I've been living with
7 Mr. Ketabchi, what I mean is having had so many contacts with
8 him over these past two years, it's been quite a journey.

9 And so I stand here today knowing that your Honor,
10 when you sentence Mr. Ketabchi today, you're going to be
11 sentencing the whole man, not just his offense conduct; his
12 weaknesses, his strengths, his good characteristics, his
13 lifetime of good deeds over the years, his particular work in
14 Alcoholics Anonymous.

15 The government writes in its sentencing memorandum:
16 "No amount of kind gestures or good deed erases the fact that
17 for years he defrauded people."

18 Of course it doesn't erase --

19 THE COURT: For years what?

20 MR. BECKER: He defrauded people.

21 The government says his good deeds do not erase the
22 fact that he defrauded people.

23 Of course it doesn't erase the fact; and I haven't
24 argued that it erases the fact. But his good deeds and his
25 ministering to people in Alcoholics Anonymous, his carrying a

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1 man down a flight of stairs who is infirmed so he can go to the
2 doctor, his handing out food to people on the street who are
3 homeless, his buying dozens of pizzas and giving them out. The
4 things that he has done in his life are highly relevant under
5 3553(a). And they do not erase his bad deeds, but they must be
6 considered as mitigation and that's why I've presented it to
7 the Court.

8 I think that all the evidence shows that the man who
9 emerges from both Dr. Goldsmith's report and the letters, and
10 the offense conduct, which I've made no effort to minimize or
11 to contest -- but what we have here, Mr. Ketabchi is a
12 big-hearted and generous man who's been a force for good in
13 many persons' lives. He is a severely damaged man by a long
14 documented history of bipolar disorder and addiction disorder.
15 Dr. Goldsmith's report, which is quite comprehensive and
16 lengthy --

17 THE COURT: I've read it very carefully.

18 MR. BECKER: -- the government has not disputed one
19 word in that report. And the probation department acknowledges
20 that Mr. Ketabchi's bipolar disorder and addiction disorders
21 might have contributed to the offense conduct.

22 Mr. Ketabchi --

23 THE COURT: I don't think anyone is disagreeing with
24 that. Go ahead.

25 MR. BECKER: Mr. Ketabchi did not choose to have this

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1 disorder; he did not choose to suffer from bipolar.

2 THE COURT: No, but he chose to keep on calling Ms. --
3 I think it's Ms. Thompson, tried to max her out.

4 MR. BECKER: Your Honor, that was unquestionably the
5 worst thing that he did --

6 THE COURT: I'm not sure about that. Go ahead.

7 MR. BECKER: -- in this case.

8 Well, I think certainly it was a big number.

9 But, your Honor, what we have from Dr. Goldsmith is
10 his unquestioned conclusion that Mr. Ketabchi's mental
11 disorders -- he says to a reasonable degree of psychiatric
12 certainty, Mr. Ketabchi's criminal behavior crossing the line
13 and making false unsustainable promises to customers is, in
14 part, explained by his bipolar mood disorder and addictive
15 behavior characterized by grandiose and expansive mood
16 impulsivity, racing thoughts, boundary crossings, and increased
17 psychomotor activity.

18 THE COURT: To the extent I understand those words in
19 their technical sense, I don't think I disagree either. The
20 fact that he would get a rush out of defrauding somebody and
21 would constantly go back to them and again try to get more
22 money and more money and more money and to take advantage of
23 them, I think, in part, stemmed from his psychological state.
24 He was getting endorphins or something.

25 MR. BECKER: Yes. Exactly.

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1 THE COURT: I don't think there's any question about
2 that.

3 MR. BECKER: Dopamine.

4 THE COURT: That certainly does not change the fact
5 that he was defrauding people knowingly and willingly and
6 intentionally and maliciously.

7 MR. BECKER: I have written in my memo that his mental
8 disorders and addiction does not excuse his conduct, is not
9 excuse for his conduct, is an absolutely mitigating factor.

10 5H1.3 of the sentencing guidelines, which the statute
11 requires your Honor to consider, specifically talks about how
12 when mental illness is a factor in a case, to some degree the
13 Court may consider that.

14 And the one word that your Honor used a moment ago
15 which I respectfully disagree with is "malicious." I don't
16 think this man is malicious. I think the evidence --

17 THE COURT: All right, then strike that.

18 Intentionally and knowingly.

19 MR. BECKER: Intentionally and knowingly he was driven
20 by compulsive, grandiose thoughts that Dr. Goldsmith says he
21 had difficulty controlling. People with bipolar disorder and
22 addictive personalities --

23 THE COURT: You're not saying he didn't know what he
24 was doing, right?

25 MR. BECKER: No, your Honor. No, your Honor.

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1 If Mr. Ketabchi's mental illness and addiction was a
2 defense, we might have gone to trial. It is not a defense.

3 He is guilty.

4 THE COURT: What 5H number were you addressing?

5 MR. BECKER: 5H1.3, your Honor.

6 THE COURT: Yes, it's a policy statement. I see it.

7 Go ahead.

8 MR. BECKER: It's a policy statement that the
9 Sentencing Commission has promulgated. And even if 5H1.3 --

10 THE COURT: I'm not giving him a departure under
11 5H1.3, which is a policy statement; nor, I think, under the
12 plea agreement can you ask for it, although I'm not sure. But
13 I obviously am taking this psychiatric report into account when
14 I sentence him.

15 Go ahead.

16 MR. BECKER: Your Honor, the government for some
17 reason in this case early on, and persisting to this day, took
18 the position that Mr. Ketabchi was at the top of the heap and
19 was the most culpable. And they did so notwithstanding that
20 all of the objective criteria that we rely on in determining
21 culpability shows that he's not the most culpable.

22 One is that he was a manager or a supervisor, not an
23 organizer or leader. We've covered that.

24 Two, the amount of restitution that he has been found
25 responsible for, that is, the money that he got from

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1 identifiable victims that he's got to pay back by virtue of the
2 restitution order, which he has agreed to, is approximately --

3 THE COURT: He's agreed to restitution of \$563,427.99?

4 MR. BECKER: That is correct, your Honor.

5 THE COURT: And you've agreed to a forfeiture order in
6 the same amount?

7 MR. BECKER: No, the forfeiture order is --

8 THE COURT: I'm sorry. It's one million --

9 MR. BECKER: \$59,000.

10 THE COURT: \$1,059,803.84?

11 MR. BECKER: Yes, your Honor.

12 THE COURT: All right.

13 Government, have I signed the forfeiture order
14 already?

15 MS. FLETCHER: No, your Honor.

16 AUSA Sobelman went to get one for --

17 THE COURT: All right. Submit it to me by today or
18 tomorrow.

19 MS. FLETCHER: We will, your Honor.

20 MR. BECKER: So let's look at those numbers for a
21 minute, because I think it sheds light on the relative
22 culpability.

23 First forfeiture. That's the amount of money that
24 came into an account or accounts that Mr. Ketabchi controlled.
25 And the number again is 1,059,000 and change. That's the total

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1 number that the government determined came into -- that he
2 grossed, if you will. And that includes A-1 monies, I believe,
3 while he was at Olive Branch.

4 William Sinclair testified that in 2014 alone, one
5 year, he grossed \$5 million. And we can, I think, say then --
6 because he started in 2012 and 2013 and went till he was
7 arrested -- his total numbers, God knows what they were, maybe
8 they were 15 or \$20 million.

9 Joseph McGowan, who the government determined should
10 get four levels for being an organizer or leader, he took in,
11 according to his plea agreement, \$1,763,582.05, almost double
12 what Mr. Ketabchi did. His restitution, your Honor, is the
13 same amount, if I'm right about that.

14 THE COURT: I'm not sure what your point is. If your
15 point is that your defendant is not the worst of these
16 defendants, that's okay with me, if that's what you want to
17 say. I think what you're reading to me are agreed-upon
18 forfeiture amounts, is that correct, and restitution amounts.

19 MR. BECKER: Yes, they are agreed upon after the
20 government determined that those were the amounts it accurately
21 stated what each defendant got, yes.

22 And I am bringing all of this to the Court's attention
23 because the government has gone out of its way, both in the PSR
24 and in their sentencing submission, to try to paint
25 Mr. Ketabchi as the single most culpable defendant in this

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1 case. And when you look at the duration of his involvement,
2 when you look at the amount of money he grossed, when you look
3 at the role that they say he occupied, when you look at the
4 amount of restitution, and when you look at what motivated his
5 criminal conduct, namely, mental illness and drug addiction, as
6 opposed to malicious --

7 THE COURT: I don't understand.

8 MR. BECKER: -- he's not the most culpable.

9 THE COURT: Sir.

10 Look, I'm taking into account the psychiatrist report
11 here. I'm taking into account the fact that he got a rush out
12 of defrauding people. That is not the same as saying -- I'm
13 sorry, I don't have Live Note here. I think what you just said
14 is he was compelled to do it by his mental illness. I don't
15 know if "compelled" was your word, but that was the sense I
16 got. That's not the same thing.

17 The fact that his actions result, at least in part, in
18 his mental makeup, that's obvious. But I don't think you can
19 say he was controlled by this mental illness and therefore he
20 had no free will or no -- his actions were not knowing and
21 voluntary.

22 MR. BECKER: Your Honor, I do not believe I've said
23 anything from which you could reasonably say that his actions
24 were not knowing and voluntary. He pleaded guilty. It was an
25 element of the offense.

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1 I'm saying that what drove his conduct is highly
2 relevant in determining how bad a person he was; in
3 determining --

4 THE COURT: This is not about how bad he is; it's
5 about the crimes he committed.

6 MR. BECKER: Yes, your Honor.

7 And what I'm saying is -- I'll give you this example:
8 William Sinclair, I saw some of his testimony and I read a lot.
9 And Mr. Ketabchi, the government says in its sentencing
10 submission, was among the most culpable because he was the most
11 aggressive. He pushed boundaries where others didn't. He was
12 sort of a bull in a china shop.

13 Well, first of all --

14 THE COURT: Well, he was pushing the salesmen to do
15 more and more and more, yes.

16 MR. BECKER: Yes.

17 And you know what? That bull in a china shop
18 approach, that aggressiveness, that pushing boundaries, is the
19 exact terminology that Dr. Goldsmith uses in his report.

20 THE COURT: All right. I understand the point.

21 What else do you want to tell me?

22 MR. BECKER: That's the mental illness.

23 I think your Honor may have conflated the mental
24 illness with the drug addiction. The mental illness, which is
25 the bipolar, is the compulsiveness. The getting the rush, the

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1 dopamine fix, from the sale, not from defrauding people, from
2 closing the deal, closing the deal, he --

3 THE COURT: Closing the fraudulent deal.

4 MR. BECKER: Yes, your Honor.

5 THE COURT: Got it.

6 MR. BECKER: It's the closing of the deal, that is
7 separate and apart from the compulsive grandiose thinking
8 that's caused by bipolar. It was a very toxic cocktail, okay?
9 And that's what drove him.

10 People like Finocchiaro and Sinclair, smooth
11 operators. Key gloves.

12 Sinclair testified both on direct and on cross --

13 THE COURT: I would say Sinclair was more slick than
14 smooth, but I think we're talking about the same thing.

15 MR. BECKER: I was being too kind when I called him
16 smooth. Slick. Unctuous maybe, you know? Dripping.

17 THE COURT: He also knew to plead guilty early.

18 MR. BECKER: And Mr. Ketabchi came to me very early on
19 and said, I want to plead guilty early too. And I told the
20 government that, and that's one of the reasons I pressed that.

21 So those guys, it's not --

22 THE COURT: You're not arguing acceptance of
23 responsibility points, are you?

24 MR. BECKER: Why would I do that? He gets
25 acceptance --

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1 THE COURT: You're right. I thought you were pushing
2 another -- pushing for more than that.

3 MR. BECKER: No, no, no. You made the comment that
4 Mr. Sinclair has the good sense --

5 THE COURT: He has the three points for acceptance;
6 correct?

7 MR. BECKER: Yes, your Honor.

8 THE COURT: All right.

9 MR. BECKER: So I forgot the word, your Honor, the
10 slick -- the slick Mr. Sinclair, the reason that he maybe
11 wasn't as aggressive is because, as he testified, he just
12 wanted to stay under the radar, but defraud as many people as
13 he could. He was more, respectfully, a sociopath.

14 THE COURT: You're telling me that there are people
15 more culpable than your client. I understand that point.

16 MR. BECKER: Okay.

17 THE COURT: What do you want to tell me about your
18 client that you haven't?

19 MR. BECKER: Okay. Very well, your Honor.

20 I want to just briefly --

21 THE COURT: And I don't want the record to reflect at
22 all any suggestion that this man is not getting acceptance of
23 responsibility points. He is.

24 Go ahead.

25 MR. BECKER: The last thing I want to say about his

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1 offense conduct, lest the government again stand up and say
2 he's the worst person in the case and should get an above
3 guidelines sentence --

4 THE COURT: There are a lot of really -- people who
5 have done very serious things here.

6 Go ahead.

7 MR. BECKER: So Mr. Ketabchi, according to the
8 government, his offense conduct caused at least five people,
9 but fewer than 25 people, to suffer substantial financial harm,
10 at least five, but fewer than 25. That's very serious. But
11 it's not tanking a market. It's not wiping out a community.
12 It is bad --

13 THE COURT: Quote, page 6: "The conduct was certainly
14 serious, but it did not wreck financial markets or involve
15 force or extortion or obstruction of justice."

16 Is that the point you want to make?

17 MR. BECKER: Yes, your Honor.

18 But even with respect to telemarketing frauds, even
19 with respect to --

20 THE COURT: You don't want to hear an argument that
21 could be made that defrauding elderly feeble people unable to
22 withstand his onslaught and the onslaught of other workers,
23 when he was a manager of them, may, in fact, be more serious
24 than wrecking a financial market or obstructing justice? I
25 certainly could see the argument; I don't have to come down on

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1 it one way or the other.

2 Were you here for any of the victim testimony?

3 MR. BECKER: Your Honor, I've read much of the
4 testimony.

5 Your Honor, I was making the point not what your Honor
6 picked up on from my sentencing memorandum, but that I just --

7 THE COURT: You were quoting from your sentencing
8 memorandum. And I did too.

9 MR. BECKER: No, no, no. I was saying he defrauded --
10 well, if I referenced the sentencing memorandum, I'll obviously
11 defer to the Court's recollection.

12 What I meant to be referring to, what I thought I was
13 referring to, is that he defrauded more than -- he caused more
14 than five, but fewer than 25, people to suffer substantial
15 financial harm. And that is really bad. But it's not the
16 highest adjustment under the guidelines. It wasn't 500 people;
17 it wasn't 1,000 people. It was bad, your Honor. I'm not
18 making excuses for it. But I'm trying to bring some reality to
19 the table. It was bad. It was really bad. But it was not a
20 Marc Dreier fraud; it was not tens of millions of dollars.

21 So that's the last thing I want to say about the
22 offense conduct. And he did not, as some of the codefendants
23 do, sell debt relief.

24 THE COURT: Sell what?

25 MR. BECKER: Sell debt relief.

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1 THE COURT: Debt relief.

2 MR. BECKER: Some of the defendants in this case maxed
3 people out on their credit cards and then called them up and
4 said, I represent a company, Bill Sinclair, that comes to the
5 aid of people who have been defrauded. We can relieve you of
6 your debt, and then he defrauded them again. That's something
7 Mr. Ketabchi did not do.

8 What Mr. Ketabchi did --

9 THE COURT: Did he try to sell the physical machines
10 to Ms. Thompson?

11 MR. BECKER: I believe no, he did not. He did not.

12 THE COURT: All right. Good on him.

13 MR. BECKER: What he sold, your Honor, was, again,
14 fraud, capital letters, fraud. He sold essentially the
15 tangibles that Mr. Quiles delivered, but he did so on bogus
16 promises of false earnings. In other words, buy these things
17 and you'll make all this money. And he admitted to that.

18 THE COURT: I think they were having problems, if I'm
19 not mistaken, with his giving specific promises about returns,
20 which other people said you can't do, you can't do, if I
21 remember correctly.

22 MR. BECKER: Your Honor, I think the salesmen in this
23 case, part of this terrible fraud, they all basically did the
24 same thing. It was how they did it. Some of them had a soft
25 touch, some of them had an aggressive touch.

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1 THE COURT: You're probably right.

2 MR. BECKER: If you look closely at the government's
3 sentencing letter, and they talk about why he's so bad, they
4 talk about because he was so aggressive. He's aggressive
5 because he's a sick man and that's his style. But ultimately
6 what he did is what everybody did. And you know what? He
7 didn't do as long as the other people and his numbers aren't as
8 big.

9 Moving on.

10 I didn't know Mr. Ketabchi went to AA -- let alone was
11 a mentor there -- until the letters started coming in. And I
12 won't belabor it, because I know your Honor has read it. You
13 have a letter from Ken Boede, you have a letter from Lizzy
14 de Vries, Mr. Quinn, who I spoke to.

15 Mr. Quinn is in the courtroom here today. I took him
16 aside -- I didn't meet him before today -- and I said, How
17 often does Mr. Ketabchi come to AA?

18 He said, Basically, every day.

19 I said, Does he just come for himself?

20 No. He is a shining light at AA. He has gotten many
21 people through to their sobriety. He has saved people.

22 Mr. Quinn is here today. He will tell that to your
23 Honor if your Honor wants to ask him. He knows him 12 years.

24 You have Ken Boede, who says, I know it sounds like an
25 exaggeration, but this man has saved hundreds of lives.

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1 It's remarkable. It's a remarkable testament to him.

2 He is deeply flawed. He is deeply flawed. He can at
3 the same time save a life and help her life. There's no
4 question about it.

5 The government wants everything to fit into a neat
6 cubbyhole; all bad, bad, bad. There's not one word in the
7 government's sentencing submission about Mr. Ketabchi's mental
8 illness, not one syllable. They focus solely on the offense
9 conduct.

10 This is a man who saves lives. This is a man who, as
11 I think I may have already referenced, Dr. Ali M.'s letter,
12 about there was a patient who was very ill infirmed, and
13 Mr. Ketabchi carries him down steps once a week.

14 THE COURT: You already told me that and I already
15 read it.

16 MR. BECKER: Your Honor, the other thing that I want
17 to -- I'm drawing to the end of my remarks. A couple of
18 things. Very important.

19 When I was learning about Mr. Ketabchi's mental
20 illness and read Dr. Goldsmith's report, I contrasted the
21 behavior that's detailed in that report, the behavior that your
22 Honor is going to sentence Mr. Ketabchi for, with the fact that
23 for the last two years, since his arrest in this case, he has
24 shown remarkable post-offense rehabilitation. He has, of
25 course, made every court appearance, as required; he's supposed

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1 to.

2 THE COURT: This argument is once he's caught, he
3 cleaned his act up, is that what this argument is?

4 MR. BECKER: This argument is that once they got his
5 psychotropic medications right, he was able to clean up his
6 act, and that's where I was going with it, Judge.

7 He made every court appearance; he's gone to every
8 psychological appointment; every psychiatric appointment; AA,
9 as I said. He works six days --

10 THE COURT: He's a wonderful AA sponsor. I have
11 letters here. I've written it down. There's no question about
12 that.

13 MR. BECKER: Gets up every morning at 5 a.m. and works
14 six days a week.

15 So I said to Mr. Ketabchi -- and I began this
16 presentation today talking about how Topamax is now 100
17 milligrams.

18 THE COURT: He has excellent letters from his family.
19 His father is devastated by the two boys' actions. His
20 wonderful letter from his father.

21 MR. BECKER: Dr. Verret, who was his treating
22 physician under the auspices of pretrial services, has tinkered
23 with his medication. The medication that he has been on the
24 last two years, he was not on when he was selling at Olive
25 Branch, he was not on when he was at A-1. He was adrift. He

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1 didn't have the medicine he needed. And so the symptoms of his
2 disease manifested themselves.

3 He has gotten out of sales. He's not in sales
4 anymore.

5 THE COURT: I would hope not.

6 MR. BECKER: And he shouldn't be in sales.

7 Bill Sinclair is in sales still, Mike Finocchiaro is
8 in sales, other defendants may be in sales.

9 He got out of sales. He owns his misconduct. He's
10 taking his meds. And he is, I respectfully submit, no longer
11 in danger of reoffending, provided he does that, provided he
12 continues to get help and provided he continues to --

13 THE COURT: Oh, something tells me he's not going to
14 recidivate again. But just as before, my concern is more
15 general deterrence. Other telemarketing fraudsters need to
16 hear that you go to jail when you take the life savings of
17 multiple people.

18 MR. BECKER: I agree. And my sentencing memorandum
19 says he should go to jail. It says 27 months.

20 THE COURT: I'm not inclined to give him the upward
21 departure that the government wants, but he's going to jail.

22 MR. BECKER: I understand that, your Honor. And I've
23 suggested that he go to jail in my sentencing memorandum. I
24 said no more than 27 months.

25 Your Honor, I cited a study in my sentencing

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1 submission. It is the swiftness and certainty of punishment
2 that deters people, the length doesn't. It's very easy for us
3 to pat ourselves on the back as prosecutors and say, A longer
4 sentence is needed to send a message.

5 Nobody in the telemarketing world looks at a guy who
6 gets 27 months in jail and says, I think I'll do it. But if he
7 gets 36 months, he won't do it.

8 And I ask the Court to consider the reality of what
9 happens to a human being when you put him in a cage or in a
10 cold jail cell and you close the door.

11 You know, when Paul Manafort was sentenced not long
12 ago, the very first sentence where he got a sentence a lot of
13 people complained about, the judge, in setting forth reasons
14 for his sentence, said, You know -- I think he turned to the
15 government, he said, Have you ever spent a day in a jail cell?
16 Have you ever spent a week? Did you ever spend a month, how
17 cold and foreboding it is, how it destroys lives.

18 And what good is going to come out of putting him in
19 jail an extra six months or an extra year or an extra two
20 years? What good comes out of that, so that his -- so that he
21 comes out more of a broken man, so that he comes out more torn
22 away from his very, very, very strong safety net, so that he's
23 torn away from his psychiatric treatment? Because he's not
24 going to get that in jail, Judge. He's not going to get that
25 in jail.

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1 He should be given a minimal jail sentence; it should
2 be accompanied, when he gets out, by strict pretrial -- excuse
3 me, supervised release.

4 THE COURT: You stipulated to a guideline range of 70
5 to 87 months; correct?

6 MR. BECKER: No. I stipulated that those were the
7 applicable advisory sentencing guidelines. And as the Supreme
8 Court and Second Circuit has said multiple times, those
9 guidelines are -- not only are they not presumed reasonable --
10 excuse me, not only is there not a presumption that they are
11 reasonable, but they are not to be presumed reasonable.

12 THE COURT: I understand. They are a starting point,
13 and you're entitled to argue variances under the advisory
14 guidelines. I understand that.

15 MR. BECKER: It's one factor under -- it's 3553(a)(6).
16 And there's seven factors, and that's one of them.

17 And I've never argued that the Court shouldn't
18 consider the offense conduct. But there's other factors to
19 consider.

20 I haven't spoken -- and I won't at length -- about
21 Mr. Ketabchi's daughter Ryan, who is not his biological
22 daughter, but he's raised her since she's five --

23 THE COURT: He writes about her lovingly.

24 MR. BECKER: It's easy to say he should have thought
25 about her before he did these crimes. That's for sure. But,

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1 again, I think these crimes, again, were motivated by the
2 factors we talked about. And even if he was less than as
3 thoughtful as he should be, it doesn't mean that this Court
4 should be less thoughtful as it should be. And I think the
5 Court can consider that as well.

6 This is a young girl whose biological father abandoned
7 her, and this is her daddy. And he cares for her with every
8 fiber in his body. He's got to go to jail. I know it, he
9 knows it.

10 I ask your Honor to consider all of the factors under
11 3553(a) and give him a sentence that is sufficient, but not
12 greater than necessary.

13 THE COURT: All right. Thank you, sir. I appreciate
14 your remarks.

15 I think this started by my asking Mr. Becker whether
16 he had any objections to the findings of fact in the
17 presentence report, and we took off from there.

18 Does the government have any objections to the
19 findings of fact in the presentence report?

20 MS. FLETCHER: No, your Honor.

21 THE COURT: All right.

22 I adopt the findings of fact with the changes that I
23 made them.

24 Mr. Becker has spoken on behalf of the defendant.

25 Government, what would you like to tell me?

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1 MS. FLETCHER: Your Honor, I won't belabor the points
2 that are in our submission, but I think there are certain --
3 there are certain things that Mr. Becker raised orally in court
4 that bear addressing.

5 It appears to the government that Mr. Becker would
6 like for there to be a formula for culpability.

7 THE COURT: Like there to be a?

8 MS. FLETCHER: A formula. He would like the Court to
9 say, This person's numbers are higher than this other person's
10 numbers in this category and this category and, therefore, what
11 he did isn't as serious; therefore, he should get a lesser
12 sentence.

13 And to a certain extent, the guidelines are formulaic.

14 But the government, as your Honor is aware, has
15 requested an upward variance in this case from the stipulated
16 guidelines range.

17 I think your Honor a moment ago may have said
18 departure.

19 THE COURT: I said departure. That's wrong. You're
20 seeking -- because you're bound by the agreement as well,
21 you're seeking a variance; correct?

22 MS. FLETCHER: Yes, we are, your Honor.

23 And I know that your Honor has been on the bench for a
24 long time; and so the significance of that request is not lost
25 on the Court.

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1 And the reason for the government making that request
2 is that, without hesitation, the conduct that Arash Ketabchi
3 involved himself in in this case is the worst conduct we've
4 seen. It doesn't matter that he only caused substantial
5 financial hardship to more than five people and less than 25,
6 because what he did for a living every day for years was take
7 advantage of extremely vulnerable people.

8 Your Honor has referred to Ms. Thompson, Jane
9 Thompson, a number of times already. He made it his business
10 to take every dime she had.

11 THE COURT: Actually, my recollection is he tried to
12 take more than that.

13 MS. FLETCHER: I believe he just tried to take all of
14 her money, your Honor. And to demonstrate the government is
15 making no excuses and no apologies for William Sinclair, it was
16 Mr. Sinclair's company who may have tried to take more than
17 that.

18 THE COURT: My notes indicate that -- I think this was
19 from trial testimony, that he did -- that at his urging, at his
20 insistence, Ms. Thompson invested about \$100,000 in merchant
21 terminals. That's why I asked the question of Mr. Becker. Am
22 I wrong about that?

23 MS. FLETCHER: Question, as I heard it, your Honor,
24 was, Did he sell her a machine? And the answer is no,
25 technically, he didn't sell her a machine. Another company,

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1 Elite, an Arizona-based lead source from whom Arash purchased
2 leads, had sold Ms. Thompson a merchant terminal business,
3 where she was supposed to get these machines to be placed in
4 businesses and would earn a commission on the swipes in them.
5 She, of course, never got those machines.

6 What Arash's company did is purported to sell her
7 services for that company so that the merchant terminal
8 business she'd already purchased could make money.

9 THE COURT: I see. All right.

10 MS. FLETCHER: And then, as your Honor will recall,
11 after Arash Ketabchi and Andrew Owimrin sold her essentially
12 every business opportunity product they could conceive of, but
13 realized she still had money left, they sold her on this notion
14 of investing \$150,000 in an equity stake in A-1 Business
15 Consultants.

16 THE COURT: That's when he was in A-1.

17 She didn't do that though, right?

18 MS. FLETCHER: She did that.

19 THE COURT: She did? She invested the extra 150?

20 MS. FLETCHER: She cleared literally every dollar out
21 of her bank account. I don't know that it's every dollar, but
22 this woman has no money because of what Arash and Andrew did to
23 her. She left her home, she cleared out her savings, she lives
24 in a trailer. When she came up here to testify, she couldn't
25 even buy herself a sandwich.

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1 Her life, her financial situation, is completely
2 destroyed because of this defendant. And she's just one
3 example. She's, I suspect, the worst victim example, but she's
4 just one. This is what he and the people working for him were
5 doing every day. They were doing this to people like Patricia
6 Cabral, who your Honor learned during our trial was an elderly
7 woman who had been diagnosed with dementia.

8 THE COURT: This is the one where he threatened the
9 son, right?

10 MS. FLETCHER: Yes.

11 THE COURT: Go ahead.

12 MS. FLETCHER: He initially told the son, Oh, we have
13 lawyers involved; we're going to work this out for you, before
14 ultimately threatening the son with a lawsuit.

15 Those are just some examples of the way that Arash
16 Ketabchi operated.

17 THE COURT: Did he end up ever selling grants? My
18 notes indicate that he expressed an interest in selling grants,
19 which were really just a complete fraud; there wasn't even any
20 receivables there -- I mean any deliverables. Did he do
21 anything with grants, to your knowledge?

22 MS. FLETCHER: So there was a period of time when
23 grants were sold at the Olive Branch marketing floor. I don't
24 know whether Arash was there at the time. I don't remember.

25 The agent is writing me a note.

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1 What he absolutely did is even at a time when everyone
2 else wanted to stay far away from brass, Arash was willing to
3 purchase grant leads. So people who had been sold this fake
4 grant and who were expecting, incorrectly, to get \$100,000 in a
5 90-day period, what Arash did was convinced those people that
6 if they invested in a business opportunity service, that would
7 hold them over until their grant came in. So while he
8 understood these grants didn't exist, he sold services to
9 people as a means of holding them over until the grant that was
10 never going to come came.

11 And he did that -- and this is in our submission --
12 after Carl Morris was arrested for selling grants. He
13 indicated to Carl Morris during that time that he was willing
14 to keep going. He wanted -- and this was in a conversation
15 with his partner, Pete Diquarto at the time, he wanted to drive
16 the car until the wheels fell off. He did not care.

17 So, your Honor, the point I'm trying to make here and
18 the point that underlies much of the arguments in the
19 government's submission, is that context matters.

20 Mr. Becker has made a lot of comparisons between Arash
21 Ketabchi and Bill Sinclair. Bill Sinclair is absolutely slick.
22 The government will make no apology for him; and he will have
23 his day before your Honor for his own sentencing.

24 But if your Honor will recall, Bill Sinclair testified
25 at the trial of Mr. Owimrin and Shahram Ketabchi that part of

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1 the reason that there were problems between him and Arash is
2 that Arash was creating too many chargebacks. So Bill Sinclair
3 implemented a policy where salespeople would be responsible for
4 their own chargebacks. That's what precipitates Arash leaving.

5 When Arash left, he starts A-1; he supervises Andrew
6 Owimrin and his brother -- not more than five people -- so he's
7 a manager as opposed to a leader or an organizer. But the
8 conduct is the same. And the government would argue it's
9 without the oversight of Bill Sinclair and Mike Finocchiaro
10 that things really go off the rails.

11 Your Honor heard the recording between Arash and
12 Andrew Owimrin with respect to Charlene Foster. They talk
13 about just putting charges on a potential victim's credit card
14 because she won't even realize it. It's that type of conduct
15 that is exemplary, even in this case. Even where all the
16 defendants in this case are committing fraud all day, every
17 day, there are examples like this that are almost always
18 associated with Arash Ketabchi.

19 Your Honor, Mr. Becker's submission and his remarks
20 today focus a lot on the good that Arash has done and his
21 efforts to minister others in their sobriety. The government's
22 view about Arash Ketabchi's culpability and his role in this
23 offense is, in large part, colored by that. Because during
24 much of the offense, as your Honor heard during trial, William
25 Sinclair, at different points, was taking 40 Oxycodone pills a

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1 day. Nearly everyone was addicted to some form of extremely
2 potent and dangerous narcotics. Arash Ketabchi wasn't. He was
3 sober during that time. And instead of taking steps to
4 minister Andrew Owimrin, who, I think, is fairly viewed as his
5 younger cousin, he was preying upon the fact that Andrew
6 Owimrin had this addiction. He was using Andrew --

7 THE COURT: My notes indicate that at some point
8 Ketabchi was using cocaine, heroin, OxyContin, and Xanax.

9 MS. FLETCHER: Your Honor, Mr. Becker can correct me
10 if I'm wrong. My understanding from speaking to virtually all
11 the witnesses in this case is that but for a short period of
12 time just before his arrest, Arash Ketabchi was not using
13 drugs, certainly not to the extent that Andrew Owimrin,
14 Christopher Wilson, Joseph McGowan, Bill Sinclair, Michael
15 Finocchiaro were using huge amounts of Oxycodone on a daily
16 basis.

17 And it was during this time that Arash was both using
18 Andrew Owimrin's urine to procure additional Oxycodone to sell.

19 And that's telling, your Honor. Remember during the
20 trial there was a discussion about why someone would need
21 urine --

22 THE COURT: No, I remember that. You needed dirty
23 urine for somebody to prescribe you the OxyContin.

24 MS. FLETCHER: Right.

25 And Arash Ketabchi didn't have dirty urine, because

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1 he, unlike nearly everyone around him, wasn't doing drugs. But
2 he saw an opportunity to take advantage of the fact that
3 everyone around him was addicted to drugs. He used Andrew
4 Owimrin's urine to get an Oxycodone prescription so that he
5 could profit off of everyone else's drug addiction.

6 Now, this is in a short line in our submission, but
7 during this same time period, throughout much of 2014, Arash
8 was involved with other people trying to ship Oxycodone into
9 New Jersey to distribute to others. The government has spoken
10 with witnesses about that. He was not just committing
11 telemarketing fraud, he was also selling pills to the
12 vulnerable people around him. And that is particularly --

13 THE COURT: Well, he's being sentenced today for
14 telemarketing fraud.

15 MS. FLETCHER: Yes. He's not charged with the
16 Oxycodone distribution. The government is merely offering it,
17 that information, to provide context for his personal history
18 and his characteristics and the seriousness of his offense. To
19 the extent the Court will consider the drug addictions of the
20 other defendants as mitigating -- and the government agrees the
21 Court should -- that mitigating circumstance not only was not
22 present with Arash Ketabchi, but it was something that he used
23 to take advantage of other people around him.

24 Your Honor, I've taken a lot of notes. I think your
25 Honor is very familiar with the facts of this case.

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1 There is not a formula for culpability.

2 Arash Ketabchi lived --

3 THE COURT: Mr. Becker was focusing really on two
4 things: One, other people were committing worse crimes than
5 this man; and two is he was driven by his mental state. What's
6 your response to that? He's not saying his mental problems
7 made him do it, but he's saying -- he's coming close to that,
8 but he's saying you have to take that into account.

9 MS. FLETCHER: Your Honor, with respect to the first
10 point, whether other people were committing more serious crimes
11 than him --

12 THE COURT: You don't have to address that.

13 Next point.

14 MS. FLETCHER: But I want to address it, your Honor.

15 THE COURT: Go ahead.

16 MS. FLETCHER: The government disagrees. For the
17 reasons I've just stated, the government disagrees.

18 I cannot identify a crime that's been committed by
19 anyone involved in this scheme that is worse than what Arash
20 Ketabchi did to Jane Thompson and what he did to Andrew Owimrin
21 and the other people who were addicted to drugs around him.

22 With respect to the mental illness issue, I'm not a
23 psychiatrist. I read the psychological report with care. I
24 have no basis to challenge that Arash engaged in risky
25 behavior. I don't think it's mitigating in this circumstance.

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1 I think it explains why he did what he did. It also explains
2 why the Court needs to protect the public from future crimes of
3 this person, and why the Court should impose a sentence that
4 provides adequate punishment.

5 He was able to support a comfortable, extravagant
6 lifestyle for many, many years at the expense of real people.
7 Mr. Becker said this isn't a market crash case. No, it's not.
8 But what Mr. Ketabchi was doing was talking to actual humans,
9 talking to people and lying to them and taking their money and
10 ruining their lives in many instances.

11 Mr. Becker said that he's been a force for good in
12 many people's lives. That may be true, but he has also been a
13 significant force of destruction. And people who would
14 consider committing the crimes that he has committed, and who
15 may think to themselves, Well, I can support myself and my
16 family for ten years. And if I get caught, so I go to jail for
17 two years? That's worth it.

18 I think people in that situation might actually think
19 it's worth it.

20 The punishment here should be severe. It should send
21 a message that people who do what Arash Ketabchi did have to be
22 held accountable and responsible. And so for that reason, the
23 government believes a sentence above the guidelines range is
24 necessary to achieve the purposes of sentencing here.

25 THE COURT: All right. Thank you.

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1 MR. BECKER: Your Honor, if I may briefly respond.

2 I was listening very carefully --

3 THE COURT: Just a moment, sir.

4 (Pause)

5 THE COURT: Let me hear from Mr. Ketabchi, then you
6 can tell me whatever you want.

7 MR. BECKER: Yes, your Honor.

8 THE COURT: Mr. Ketabchi, you don't have to say
9 anything to me; but if you wish, you certainly can.

10 THE DEFENDANT: Thank you, your Honor.

11 Thank you for your time and for allowing me to speak
12 in front of you today.

13 I wholeheartedly apologize for my offense conduct. I
14 wake up every day with shame and regret thinking that I took
15 part in causing pain to so many victims of this case. In no
16 way, shape, or form am I justifying or excusing my choices or
17 behaviors related to my offense conduct. I admit that I have
18 shortcomings and, at the beginning of this legal case, I let my
19 ego, untreated mental health issues, and addiction get in the
20 way, and I did not portray or conduct myself in the favorable
21 light of my true character.

22 I've been working through my remorse towards the
23 victims in individual therapy. I've been trying to give back
24 through acts of service in the Alcoholics Anonymous community.

25 THE COURT: Sir, if you could speak more loudly and

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1 more slowly.

2 THE DEFENDANT: Sure. Just a little nervous.

3 THE COURT: No, of course. I understand that. Take
4 your time. But the reporter needs to be able to take it down.

5 THE DEFENDANT: Sorry about that.

6 I have struggled with mental health issues and
7 addiction for a majority of my life. I recently celebrated two
8 years of continuous sobriety and abstinence from substance
9 abuse. I am grateful to share that I have been consistently
10 seeking mental health treatment for my diagnosis of bipolar
11 disorder and managing my psychotropic medications. I have
12 complied with everything that has been expected from me from
13 probation and pretrial.

14 I have gained a lot of insight about myself and the
15 underlying mental health issues of untreated mania and
16 depression leading to my poor judgment and behaviors during my
17 involvement with the telemarketing business. My heart and my
18 true self and my character is not defined by the telemarketing
19 business I was involved in. I am a father, a son, partner,
20 brother, and friend. There are many different parts to who I
21 am.

22 I have been working very hard every day making an
23 honest living, as I have been waking up at 5 a.m. every day and
24 commuting to New York City from New Jersey to help my
25 72-year-old father run his health shop.

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1 The past two years --

2 THE COURT: But isn't that -- didn't he give you some
3 of those shops way early on and you drove them into bankruptcy?

4 THE DEFENDANT: Yeah, those were candy shops, yes.

5 THE COURT: Go ahead.

6 THE DEFENDANT: The past two years have been a very
7 eye-opening experience for me. I have been truly humbled. I
8 have learned that my actions have consequences, and that my
9 actions affected everyone and every part of my life.

10 I am deeply saddened and ashamed and sorry to my loved
11 ones, including my friends and family and, in particular, my
12 father, my daughter, my sister, my partner, and my brother.

13 My daughter, Ryan, did not have a father figure until
14 we met, when she was four years old.

15 THE COURT: Take your time, sir.

16 THE DEFENDANT: We have been inseparable since a
17 concern that my past poor choices are going to affect her
18 emotional and mental well-being and cause her additional
19 abandonment issues. My 11-year-old daughter is still
20 developing and does not deserve her father to not be present
21 for her development milestones. We are very close. And she
22 could not attend today because she could not bear watching me
23 get sentenced, nor did I want to expose her to this trauma.

24 I also feel tremendous guilt that my brother, Shahram,
25 was involved in this legal case. I blame myself --

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1 THE COURT: You brought him in; correct? You brought
2 him in.

3 THE DEFENDANT: He was just my assistant.

4 MR. BECKER: He said he blames himself, your Honor, as
5 your Honor was speaking.

6 THE COURT: Okay.

7 THE DEFENDANT: I understand and agree, and I need to
8 pay the consequences for my criminal conduct. I am ready to
9 continue on this positive path I have been on for the past two
10 years. And I am ready to give back to the victims and make my
11 amends.

12 I have reflected on my behavior for two years and have
13 learned so much from it. I am accountable for my bad
14 decisions, poor judgment, and mistakes, and I am remorseful for
15 the victims involved.

16 Your Honor, I kindly ask for your grace and leniency
17 for a fair and appropriate sentence, with my daughter, mental
18 health, and addiction in mind. I know actions speak louder
19 than words, and I want an opportunity to show my amends to the
20 victims and walk the talk.

21 Thank you again for your time and consideration with
22 my life-changing sentence.

23 THE COURT: Thank you, sir.

24 I appreciate those remarks. I believe you are truly
25 remorseful, there's no question. I think those remarks, all of

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1 them, were very genuine and heartfelt on your part. And I
2 appreciate your delivering them here.

3 Mr. Becker.

4 MR. BECKER: Yes, your Honor, if I may briefly respond
5 to what Ms. Fletcher said.

6 As I was saying, I listened very carefully.
7 Ms. Fletcher began by saying that, in the government's view,
8 Mr. Ketabchi's conduct was the worst conduct we've seen. And
9 then I waited for Ms. Fletcher to say what that conduct was.
10 And it was Jane Thompson essentially taking everything she had;
11 and also being very, very aggressive with another person who
12 Ms. Fletcher identified by name. And he did do that.

13 And in total, more than \$200,000 was taken from
14 Ms. Thompson. And the total amount of restitution from
15 everyone else identified by the government as to his victims is
16 another 300,000 and change.

17 So if what the government means when they say the
18 worst conduct was his, because he took \$200,000 from one
19 victim, fine. But if the government means that his conduct was
20 the worst because he did it the longest, stole the most money,
21 or did the worst things, that's wrong. Your Honor asked
22 Ms. Fletcher if he ever sold grants. And I think Ms. Fletcher
23 said he considered it, but didn't do it.

24 And the next question is --

25 MS. FLETCHER: That's not what I said, your Honor.

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1 MR. BECKER: Well, I don't believe there's any
2 evidence that he ever sold grants. Debt relief, which everyone
3 says was the single worst thing -- people who had already been
4 maxed out, then they go and they try to sell them -- We can
5 save you from the criminals who maxed you out, when they were
6 the criminals. He never did that. And others in this case
7 did.

8 When you consider his victims and the fact that he
9 victimized people, more than five, but fewer than 25, I
10 believe -- I can't say with certainty -- that virtually every
11 single defendant in this case has guidelines where they're held
12 accountable for victimizing to the extent of causing
13 substantial financial harm of more than five and fewer than 25.
14 If he's the worst, why is he in the same category as everyone
15 else? Because he's not the worst. And the government would --

16 THE COURT: I don't think you really want to be
17 fighting this fight on the basis of whether your client is the
18 worst of the worst --

19 MR. BECKER: Okay.

20 THE COURT: -- or not the worst of the worst.

21 MR. BECKER: That's what the government stood up and
22 argued.

23 THE COURT: But I'm not concerned about that.

24 MR. BECKER: Okay. Very well. Then I'll move on.

25 THE COURT: I'm concerned about what he did, which is

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1 bad.

2 MR. BECKER: It is, your Honor.

3 THE COURT: Not whether he's the worst.

4 MR. BECKER: To just clarify his drug use, okay,
5 Mr. Ketabchi's anniversary date -- and for anyone who knows
6 about drug addiction and alcohol, an anniversary date is when
7 he last used drugs, is February 26, 2017. He was arrested
8 March 21st, 2017. I said '17, right? '17.

9 So this man is about the most hardcore drug addict
10 that I've ever encountered in my life. And if you read Dr.
11 Goldsmith's report, as I know you have, his drug of choice
12 doesn't exist. Because you name a drug, he's abused it:
13 Heroin, cocaine, Oxycodone, hallucinogens, speed, marijuana,
14 you name it. He is as hardcore as it gets.

15 THE COURT: Oh, he's not the worst of the worst.

16 Go ahead.

17 MR. BECKER: When it comes to drug addiction -- I take
18 that was a quip, yes, your Honor?

19 THE COURT: It was. It was you've handled cases of
20 drug dealers who have taken every kind of drug that exists and
21 many that have been artificially manufactured. That's all I
22 was saying.

23 MR. BECKER: Fair enough.

24 THE COURT: But, again --

25 MR. BECKER: Just to shed light, the Court had asked

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1 whether or not he had used drugs, and he had.

2 THE COURT: All right. That I understand.

3 MR. BECKER: And your Honor, the last thing I'll just
4 say about the relation between his mental health and his
5 conduct, Dr. Goldsmith writes that patients who are in a
6 hypomanic mood have not lost touch with reality. But people
7 with these conditions have great difficulty in putting the
8 brakes on their intensely driven behavior; their judgment and
9 self-control can be seriously impaired. And that's what
10 happened here.

11 So those are my remarks.

12 Ms. Fletcher talked about drug involvement and
13 involving Andrew Owimrin. Your Honor interjected that you're
14 not sentencing him today for that. I'm going to take your
15 Honor at your word on that.

16 The government's details about his drug use came --
17 the details of it came to life for the first time I got this
18 report. I didn't have a chance to be at trial. I did look at
19 Mr. Owimrin's testimony, and he said that on a single occasion
20 Mr. Ketabchi asked him for urine so that he could get
21 Oxycodone.

22 THE COURT: There was testimony about that at the
23 trial.

24 MR. BECKER: Thank you, your Honor.

25 THE COURT: Well, I'm sorry this discussion, which was

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1 indeed a lengthy discussion, seems to have veered into whether
2 or not this defendant is the worst of the defendants in terms
3 of wrongdoing or whether he's the worst of anybody the defense
4 lawyers have seen in terms of drug use. That's not really
5 what's at issue here.

6 What's at issue here is the criminal conduct of this
7 defendant and what he did, which we've been going over and,
8 again, it's in all the reports. It obviously is very, very
9 serious, because it does involve real human beings who have
10 been destroyed. And we have a lot of victim impact statements;
11 and we have the testimony, live and on tape at the trial. And
12 Mr. Ketabchi was really driving a lot of that and pushing other
13 salesmen and pushing his victims, other salesmen to sell more
14 and his victims to be cheated out of more.

15 Human beings are complicated. He has done good things
16 in his life, there's no question about that. He had a
17 strong -- the presentence report says it's upper middle class
18 upbringing. He certainly has family support, articulate
19 letters from family members. So people are complicated.

20 He certainly has mental issues that is good that they
21 are being addressed. They obviously were one factor here. But
22 I can't and won't blink at the serious wrongdoing that's
23 occurred.

24 I am not going to go above the guideline range, but I
25 am going to sentence this defendant at the top of the guideline

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1 range. And again, there's no presumption attached to the
2 guidelines. But I do feel that 87 months is an appropriate
3 sentence here. And that is my intention.

4 Mr. Ketabchi, if you would rise.

5 Pursuant to the Sentencing Reform Act of 1984, it is
6 the judgment of this Court that the defendant, Arash Ketabchi,
7 is hereby committed to the custody of the Bureau of Prisons to
8 be imprisoned for a term of 84 months.

9 Upon release from imprisonment, Mr. Ketabchi shall be
10 placed on supervised release for a term of three years, with
11 the conditions recommended by the probation department, namely
12 the following mandatory conditions:

13 He shall not commit another federal, state, or local
14 crime; he shall not illegally possess a controlled substance;
15 he shall not possess a firearm, dangerous weapon, or
16 destructive device; he shall refrain from any unlawful use of a
17 controlled substance; he shall submit to one drug test within
18 15 days of his placement on supervised release, and at least
19 two unscheduled drug tests thereafter as directed by the
20 probation officer; he shall cooperate in the collection of DNA
21 as directed by his probation officer.

22 He shall comply with standard conditions 1 through 13,
23 plus the following special conditions:

24 He will participate in outpatient treatment program
25 approved by the probation department to include testing to

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1 determine whether he has reverted to using drugs or alcohol.

2 He will contribute to the cost of services rendered. I

3 authorize the release of available drug treatment evaluations.

4 He has to provide his probation officer with access to
5 all requested financial information. He must not incur new
6 credit charges or open additional lines of credit without the
7 approval of his probation officer unless he's in compliance
8 with the installment payment schedule.

9 He must participate in outpatient mental health
10 treatment program approved by the probation office. He must
11 continue to take prescribed medications.

12 He must submit his person, residence, place of
13 business, vehicle, and all other property to search if his
14 probation officer has reasonable suspicion that contraband or
15 evidence of a violation of any condition of supervised release
16 may be found.

17 As an additional condition of supervised release, I am
18 requiring that Mr. Ketabchi pay all taxes owed at any time,
19 either in the past or during his period of incarceration and
20 supervision, and must work out a payment plan with the IRS or
21 pay the back taxes due.

22 Within 72 hours of release from the custody of the
23 Bureau of Prisons, Mr. Ketabchi shall report in person to the
24 probation office in the district to which he is released.

25 I am not imposing a fine because I find that the

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1 defendant lacks the ability to pay a fine, after taking into
2 account the presentence report, his modest income, his limited
3 earning ability, and the restitution and forfeiture orders I am
4 going to impose.

5 Now, the restitution is agreed upon; is that correct,
6 Mr. Becker?

7 MR. BECKER: Yes, your Honor.

8 THE COURT: I hereby impose restitution in the sum of
9 \$563,427.99, payable to the victims that will be set forth on a
10 schedule to be filed with the Clerk of Court.

11 I've considered the factors set forth at 18 U.S.C.
12 3664(f)(2), and specifically I've considered the losses
13 sustained by the victims, the financial resources of this
14 defendant, his financial needs and earning ability, and his
15 dependents' needs as well.

16 I hereby order Mr. Ketabchi to pay to the United
17 States a special assessment of \$100, which is due immediately.

18 If Mr. Ketabchi is engaged in a BOP non-UNICOR work
19 program during his incarceration, he must pay \$25 per quarter
20 toward the criminal financial penalties. If he participates in
21 the UNICOR program as a Grade 1 through 4, he must pay 50
22 percent of his monthly UNICOR earnings toward the criminal
23 financial penalties. The restitution must be paid in monthly
24 installments of 20 percent of Mr. Ketabchi's gross monthly
25 income over his period of supervision to commence 30 days after

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1 his release from custody.

2 I am also imposing a forfeiture order of five hundred
3 sixty-three thousand four hundred twenty-seven dollars and --
4 I'm sorry. That's incorrect. The amount consented to is
5 \$1,059,803.84, and the government is directed to provide me
6 with a stipulation and order to that effect.

7 (The Court conferred with the deputy)

8 THE COURT: Oh, I'm sorry.

9 (Pause)

10 THE COURT: I'm checking something.

11 The sentence is 84 months -- I'm sorry. It's very
12 late and I apologize. 87 months. It's the top of the
13 guidelines. 87 months.

14 Let me restate it. My deputy has told me that I
15 switched. 87 months.

16 Mr. Becker, is there something I can help with?

17 MR. BECKER: I'm sorry, your Honor.

18 THE COURT: No, I'm just asking.

19 MR. BECKER: I signed a forfeiture order, and I wasn't
20 sure if I should hand it to your Honor or to Ms. Fletcher.
21 That's what we were doing.

22 THE COURT: I thought there was an issue that needed
23 my attention.

24 MR. BECKER: No.

25 THE COURT: Mr. Becker, are you aware of any legal

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1 reason why this sentence should not be imposed as I have stated
2 it?

3 MR. BECKER: No, your Honor.

4 But before you impose it, I have two very short
5 requests.

6 One is that your Honor -- given that your Honor
7 recommends to the Bureau of Prisons, that Mr. Ketabchi receive
8 the benefit of the residential drug -- the intensive
9 residential drug treatment program. As the record is clear, he
10 has serious addiction issues. That's request number one.

11 And request number two is that your Honor recommend to
12 the Bureau of Prisons that Mr. Ketabchi be designated to the
13 satellite prison camp in Lewisburg, Pennsylvania.

14 THE COURT: Government, are you aware of any legal
15 reason why this sentence should not be imposed as I have stated
16 it?

17 MS. FLETCHER: No, your Honor.

18 THE COURT: I hereby order the sentence to be imposed
19 as I have stated it.

20 I take it there's a limited waiver of appeal right,
21 and it's 87 or below?

22 MS. FLETCHER: Correct.

23 MR. BECKER: Yes, your Honor.

24 THE COURT: All right.

25 Mr. Ketabchi, you have the right to appeal this

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1 sentence. If you cannot pay the cost of an appeal, you have
2 the right to apply for leave to appeal *in forma pauperis*.

3 And I am informing you that in your plea agreement you
4 agreed to waive your right to appeal the sentence, and you
5 agreed to waive your right to collaterally attack the sentence
6 if I sentence you to 87 months or below, and I've done that.

7 If you request, the Clerk of Court will prepare and
8 file a notice of appeal on your behalf immediately.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: I am recommending to the Bureau of Prisons
12 that this defendant be admitted to the residential drug abuse
13 treatment program if he is otherwise eligible under the BOP
14 rules and regulations.

15 I also will recommend that this defendant be sentenced
16 in the --

17 MR. BECKER: Your Honor, one of the reasons I asked
18 for Lewisburg is because, A, it's relatively close to the New
19 York area; and, B, it has an RDAP program. And so --

20 THE COURT: I'm going to recommend that he be
21 sentenced in the region that New Jersey and Pennsylvania are.

22 Where is your family, sir? In New Jersey, isn't it?

23 THE DEFENDANT: Yes, your Honor.

24 Lewisburg is only two hours from my home, so it's
25 very --

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1 THE COURT: I'm not going to recommend a specific
2 location. Your lawyer can make that argument to the Bureau of
3 Prisons.

4 MR. BECKER: It carries a lot more weight from your
5 Honor.

6 THE COURT: I'll recommend that he be housed in the
7 region of the Bureau of Prisons which is most -- which is
8 easiest to facilitate family visits with his family which
9 resides in New Jersey.

10 Anything else?

11 Government, anything else?

12 MS. FLETCHER: The government moves to dismiss open
13 counts.

14 THE COURT: Granted.

15 Defense, anything else?

16 MR. BECKER: No, your Honor.

17 THE COURT: All right.

18 Mr. Ketabchi, I don't think there's anything I need to
19 tell you. I think you are remorseful and I think you
20 understand completely what you've done.

21 Use the time in prison as effectively as you can. You
22 are an intelligent person. I think you now are dedicating your
23 life to a legal path. You're going to find a lot of people in
24 prison who will use and take advantage of your help. You've
25 been a very successful mentor and sponsor in Alcoholics

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1 Anonymous. They have those programs in prison as well. Stick
2 to that.

3 Your crimes are substantial. You were in the trial.
4 I don't know if you were here every day, but I saw you quite
5 frequently. You heard the testimony of the victims and you
6 heard the testimony of the others. And you're being sentenced
7 appropriately for that.

8 Stay on the right path. You'll be fine.

9 MR. BECKER: Your Honor, I can't help but express my
10 fear and concern that you're relying on evidence at someone
11 else's trial that Mr. Ketabchi didn't have a right to confront
12 witnesses at, that I didn't have a right to cross-examine
13 witnesses at.

14 And I know that it's very hard to compartmentalize in
15 your brain where you hear things from, but to rely on that
16 evidence, when it was not -- when the litigants to that trial
17 had every incentive to point fingers at this man and no
18 incentive to not point fingers, and to be colored by that, as
19 your Honor has now made clear you are, I think works an
20 unfairness, and I think is, respectfully, affecting the
21 sentence, which I don't think it should, your Honor.

22 THE COURT: All right. Thank you.

23 Let's take a 15-minute break --

24 MS. FLETCHER: Sorry, your Honor.

25 There is the issue of the bail conditions and a

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1 surrender date.

2 THE COURT: Oh, I am sorry. I should have mentioned
3 the bail conditions before.

4 I take it that the government is not seeking remand.
5 I'm not granting it if the government is seeking it.

6 MS. FLETCHER: We are not. But we are seeking a short
7 surrender date, a surrender date soon.

8 MR. BECKER: Your Honor --

9 THE COURT: Why? I was going to do April 30th. Why?

10 MS. FLETCHER: That's fine, your Honor.

11 THE COURT: All right.

12 Mr. Ketabchi --

13 MR. BECKER: Your Honor --

14 THE COURT: -- shall surrender for service of his
15 sentence at the institution designated by the Bureau of Prisons
16 on or before 2 p.m. on April 30.

17 You have to continue all of your conditions of bail.
18 I have no reason to think you won't, sir.

19 You understand that; correct?

20 THE DEFENDANT: Yes, your Honor.

21 MR. BECKER: Your Honor, if I may just say -- and I
22 appreciate the Court authorizing Mr. Ketabchi to surrender to
23 the facility designated by the BOP, which he will, of course,
24 do.

25 In my experience, sometimes it takes longer than a

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1 month. If he's designated by the 30th, of course; if he's not,
2 I will ask the Court -- I will make a submission and ask the
3 Court to extend it so that he can surrender --

4 THE COURT: Absolutely.

5 MR. BECKER: Thank you.

6 THE COURT: That's no issue.

7 MR. BECKER: Thank you.

8 THE COURT: If he hasn't been designated, come to me
9 and I'll extend the designation date -- I mean the surrender
10 date.

11 MR. BECKER: Thank you.

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